

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROLANDO CASTELLANOS,
Petitioner,
v.
SCOTT FRAUENHEIM,
Respondent.

Case No. [17-cv-01307-JD](#)

**ORDER GRANTING MOTION TO
STAY AND
ADMINISTRATIVELY CLOSING
CASE**

Re: Dkt. No. 23

Rolando Castellanos, a California prisoner, proceeds with a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The original petition was dismissed with leave to amend or for petitioner to file a motion to stay this action while he exhausts a new claim.

Petitioner has filed a motion stay pursuant to *Kelly v. Small*, 315 F.3d 1063 (9th Cir. 2003) and *King v. Ryan*, 564 F.3d 1133 (9th Cir. 2009). A petitioner seeking to avail himself of the *Kelly* three-step procedure is not required to show good cause, as under *Rhines v. Weber*, 544 U.S. 269 (2005), but rather must show that the amendment of any newly exhausted claims back into the petition satisfies both *Mayle v. Felix*, 545 U.S. 644, 655 (2005), by sharing a “common core of operative facts” and *Duncan v. Walker*, 533 U.S. 167 (2001), by complying with the statute of limitations. *King*, 564 F.3d at 1141-43. Petitioner has failed to present any arguments that the newly exhausted claim shares a common core of operative facts and will comply with the statute of limitations.

Yet, liberally construing the motion, petitioner has shown good cause for his failure to exhaust the claim before filing this action, the claim does not appear patently meritless, and there does not appear to be any intentionally dilatory litigation tactic by petitioner. *See Rhines*, 544 U.S. at 277-78. Petitioner is informed that before he may challenge either the fact or length of his

1 confinement in a habeas petition in this court, he must present to the California Supreme Court
2 any claims he wishes to raise in this Court. *See Rose v. Lundy*, 455 U.S. 509, 522 (1982) (holding
3 every claim raised in federal habeas petition must be exhausted).

4 **CONCLUSION**

5 1. Petitioner's motion for a stay (Docket No. 23) is **GRANTED** and this case is **STAYED**
6 to allow petitioner to present his unexhausted claim in state court. If petitioner is not granted relief
7 in state court, he may return to this Court and ask that the stay be lifted.

8 2. The stay is subject to the following conditions:

9 (1) Petitioner must diligently pursue his state court habeas proceedings; and


10 (2) Petitioner must notify this Court within thirty days after the state courts have completed
11 their review of his claim or after they have refused review of his claims.

12 If either condition of the stay is not satisfied, this Court may vacate the stay and act on this
13 petition. *See Rhines*, 544 U.S. at 278 (district court must effectuate timeliness concerns of
14 AEDPA by placing "reasonable limits on a petitioner's trip to state court and back.").

15 The Clerk shall administratively close this case. The closure has no legal effect; it is
16 purely a statistical matter. The case will be reopened and the stay vacated upon notification by
17 petitioner in accordance with section (2) above.

18 **IT IS SO ORDERED.**

19 Dated: June 21, 2018

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23 JAMES DONATO
24 United States District Judge
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROLANDO CASTELLANOS,
Plaintiff,
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SCOTT FRAUENHEIM,
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CERTIFICATE OF SERVICE

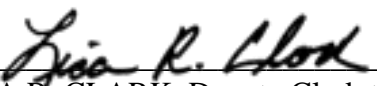
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on June 21, 2018, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Rolando Castellanos ID: AT2857
Folsom State Prison
P.O. Box 950
Folsom, CA 95763

Dated: June 21, 2018

Susan Y. Soong
Clerk, United States District Court

By: 
LISA R. CLARK, Deputy Clerk to the
Honorable JAMES DONATO